IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/04/2003

Coram

The Honourable Mr.Justice M.KARPAGAVINAYAGAM
and
The Honourable Mr.Justice AR.RAMALINGAM

Criminal Appeal No.533 of 2000 and Criminal Appeal No. 551 of 2000

Mahesh ..... Appellant (A2) in
C.A.No.533 of 2000
Parimaladevi ..... Appellant (A1) in
C.A.No.551 of 2000
-Vs-

STATE
rep.by Inspector of Police
Thiruthuraipoondi Police
Station
Nagapattinam District. ..... Respondent in
both Appeals

Appeals filed against the judgment dated 31.05.2000 and made in S. C.No. 62 of 2000 on the file of the Additional Sessions Judge, Nagapattinam.

!For appellants : Mr. R.Srinivasan for A1
Mr. K.Srinivasan for A2

^For respondent : Mr. E. Raja
Addl. Public Prosecutor.

:JUDGMENT
(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM.J.)
The Appellant (A1) in Crl.A.No.551 of 2000 was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs.2,000/-, failing which to suffer rigorous imprisonment for two months and the appellant (A2) in Crl.A. No.533 of 2000 was convicted for the offence under Section 302 read with Section 109 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs.2,000/- failing which to suffer rigorous imprisonment for two months.

2. The case of the prosecution in brief is as follows:
a) The deceased Dr.Kalidoss was having his clinic at Hospital Road, Thiruthuraipoondi. P.W.1 Sivakalai is his wife. P.W.3 Rathnam is his younger brother. The deceased was working as a Medical Officer in Government

General Hospital at Thiruthuraipoondi. He was running his private clinic, which is situated next to his house.
b) A1 Parimaladevi was working as a Nurse and A2 Mahesh was working as a Compounder-cum-Assistant in the clinic of the deceased Dr. Kalidoss.

c) On 14.04.1999, the deceased Dr.Kalidoss took A1 Parimaladevai to Temple Tower Hotel at Thanjavur and stayed there for a night and committed rape on her. On the very next day morning, i.e. on 15.4.199 9, A1 came to the house of deceased and complained to his wife P.W.1 Sivakalai that her husband raped her. She further insisted that the deceased should marry her. However, both the deceased Dr.Kalidoss and P.W.1 refused to accept her demand. Refusing to leave, A1 remained in the house of the deceased itself for three days and thereafter, she was taken by her mother. Some days later, A1 came back to the clinic and continued to work there as a Nurse as usual.

d) The fateful occurrence had taken place on 26.4.1999 at about 8.45 p.m. On hearing the alarming sound from the clinic, P.W.1 Sivakalai and P.W.3 Rathnam and other witnesses rushed to the clinic to see what was happening. They saw the smoke emanating through the door of the down portion of the clinic and the consulting room of the deceased remain closed. The people who gathered there broke open the window glasses and entered into the room. At that time, they saw A1 Parimaladevi coming out of the room through the western door. The deceased Dr.Kalidoss was found in the flames. Immediately, he was taken to another private clinic at Thiruthuraipoondi.

e) P.W.10 Dr. Abu Hanifa gave first aid and thereafter, the deceased was taken to the Medical College Hospital at Thanjavur. P.W.1 Sivakalai followed the ambulance van but on the way to Tanjore near Mettupalayam, the deceased died. Then, the body was taken to the Government Hospital at Thiruthuraipoondi at 10.00 p.m.

f) Thereafter, suspecting the involvement of A.1 and A.2, who were working as Nurse and Compounder respectively in the clinic of the deceased, P.W.1, the wife of deceased Dr.Kalidoss gave a complaint Ex. P.1 to P.W.23, the Sub Inspector of Police at 11.00p.m.

g) P.W.23, the Sub Inspector of Police registered the case for the offence under Section 302 IPC and prepared First Information Report Ex.P.22 against both the accused.

h) P.W.24, the Inspector of Police, after receiving the message, took up the matter for investigation and went to the scene of occurrence and prepared Ex.P.5 observation mahazar and Ex.P.23, rough sketch, recovered M.Os. 1 to 19 and conducted inquest over the dead body on 27.4.1999 between 9.00 a.m. and 12.30 p.m. Ex.P.24 is the inquest report. Thereafter, the body was sent for conducting post-mortem.

i) P.Ws.14 and 15,doctors conducted post-morterm and they noticed 1 00 per cent burn injuries all over the body. They opined that the

deceased would have died on account of suffocation due to extensive burns. Ex.P.15 post-mortem certificate.

j) In the meantime, A1 appeared before P.W.5, the Village Administrative Officer and gave Ex.P.4 extra-judicial confession stating that on the advice of A2 she poured kerosene mixing with nitric acid and set fire to the deceased.

k) P.W.5 produced the first accused in the police station along with a covering letter Ex.P.3 to P.W.24, the Inspector of Police. P.W.24 arrested A1 and sent her for judicial custody. A2 was also arrested and sent for judicial custody.

l) P.W.24 made arrangements to send the material objects for chemical examination. After finishing the investigation, he filed the charge sheet against both the accused for the offence under Sections 302 and 109 I.P.C.

3. During the course of trial, the prosecution examined 26 witnesses, filed Exs.P.1 to P.27 and marked M.Os. 1 to 19.

4. When the accused were questioned under Section 313 Cr.P.C., they simply denied their complicity in the crime.

5. On an appraisal of the evidence available on record, the trial Court convicted the accused 1 and 2 for the offences under Sections 3 02 and 302 r/w 109 IPC as stated above. Challenging the said judgment, both the accused have filed these two separate appeals.

6. Learned counsel Mr.R.Srinivasan, appearing for A1 would take us through the entire evidence and contend that the materials available on record implicating A1, would not be sufficient to hold A1 guilty for 302 IPC, as there is no eye witness and the extra-judicial confession made by A1 to P.W.5 V.A.O. would also suffer from various infirmities and as such, the conviction imposed on A1 is illegal.

7. Mr. K.Srinivasan, Learned counsel appearing for A2, in addition, would submit that there is no material whatsoever to connect A2 with the crime in question by A2 and as such, A2 is entitled to be acquitted.

8. On these aspects, we have heard learned Additional Public Prosecutor, who argued at length.

9. We have carefully considered the rival contentions urged by learned counsel appearing for the parties and also gone through the records.

10. Considering the materials available on record and the merits of the respective contentions of the counsel, we are of the view that

the prosecution has not established the case against the accused beyond reasonable doubt.

11. The prosecution has projected two sets of evidence to prove the case against the accused;

i) P.Ws. 1 and 3 speak about A1's running out from the clinic, while the deceased was in flames and the close association of A.1 with A.2.

ii) The extra-judicial confession made by A1, the next day morning before P.W.5, Village Administrative Officer after commencement of the investigation.

12. There is no doubt that there is no direct evidence in this case and the entire case rests upon circumstantial evidence.

13. It is settled law that in the case of circumstantial evidence, the prosecution has to establish each and every circumstances and those circumstances must form a complete chain without missing any link and in the absence of the said circumstances, the accused cannot be held to be guilty.

14. In this case, as stated above, the entire case hinges upon two pieces of circumstantial evidence mentioned above. In the case of circumstantial evidence, the motive aspect is very important.

15. According to P.Ws.1 and 3, A1, a Nurse working under the deceased was taken to Temple Tower Hotel at Thanjavur on 14.4.1999 and she was raped by the deceased and thereafter, on 15.4.1999, the first accused came and insisted deceased that she must get married to him. When the deceased refused to marry, A1 on the advice of A.2 planned to take revenge and commit murder of the deceased and in pursuance of the same, she obtained nitric acid through A2 and mixed it with kerosene and poured the same on the deceased Dr.Kalidoss. Thus, the main motive attributed for this occurrence by the prosecution is the rape committed on A1 by the deceased on 14.4.1999 and the refusal of the deceased to marry A1.

16. The evidence of P.W.13, the Receptionist in the hotel at Tanjore and P.W.22 Room Boy would clearly show that both the deceased and A1 came together in a car at about 7.00 p.m. and they were talking together till 9.00 p.m. and after taking tiffin, they were staying together in the room till the next day morning. According to the prosecution, A1 was raped by the deceased two times on the same day. This story cannot be accepted in view of the fact that P.W.16 Dr.Madhuram who examined A.1 on 29.04.1999 would specifically state that she did not find any matting of pubic hair. P.W.16 issued Ex.P.16 Accident Register for A1 wherein she has stated that A1 has no evidence of recent rape and would have undergone repeated normal intercourse previously. These things would reveal that even assuming that the prosecution case that both were staying and there was sexual intercourse between the deceased and A1 is true, it must be with her consent only and it cannot be termed to be a rape.

17. With regard to the refusal to marry, prosecution has

adduced the evidence of P.Ws.1 and 3. According to P.W.1, A1 came to her house on 15.4.1999 and insisted for her marriage with the deceased Dr. Kalidoss. Both P.W.1 and the deceased did not give consent for the marriage.

18. It is the further case of the prosecution that she was staying for three days in the house of the deceased and thereafter, she was allowed to continue to work as Nurse in the same clinic run by the deceased. If the evidence of P.Ws.1 and 3, who speak about the refusal of marry is true, there was no necessity for P.W. 1 and the deceased allowing A1 to stay there for three days and also to continue to work as Nurse in the same clinic. Therefore, in our view, the motive aspect has not been clearly established.

19. In this context we have to see the evidence of P.Ws.1 and 3 who speak about the involvement of A1 and A2.

20. According to Ex.P.1, the complaint given by P.W.1, when she entered into the clinic, she saw her husband in the flames and A1 was running through the northern door way. But, the observation mahazar Ex.P.5 would show that there is no door on the northern side. The sketch and the observation mahazar would clearly show that there are two doors, one on the eastern side and the other on the western side. Therefore, this aspect of evidence is quite contradictory.

21. This can be viewed from yet another angle. If P.Ws.1 and 3 had actually seen A1 running away from the clinic, they would have very well mentioned the same suspecting her involvement either to P.W.10, the doctor, who gave first aid to the deceased Dr.Kalidoss or to P.W.1 4 and P.W.15, the doctors, who declared the death and conducted autopsy on the dead body, respectively.

22. As a matter of fact, P.W.10 Dr.Abu Hanifa, P.W.12, the Pharmacist of Thiruthuraipoondi Government Hospital and P.W.14, the doctor, who conducted autopsy have specifically stated that they were not informed about the cause for the burn injury. As a matter of fact P.W.1 would admit when the deceased was taken to P.W.10 Doctor she also accompanied. No reason was adduced as to why P.W.1 did not inform this to the Doctors. Under those circumstances, we entertain a doubt as to whether P.Ws.1 and 3 would have seen A1 running away from the clinic at the relevant point of time.

23. Yet another feature could be noticed in this case. P.W.1 went to the police station only at 11.00 p.m. and gave complaint Ex.P.1 against A1 and A2. P.W.1 has simply mentioned that she is having suspicion on A2 as he was closely associated with A1. Though First Information Report was registered at 11.00 p.m on 26.04.1999, it is noticed that the complaint and the First Information Report were received by the Court only on 27.04.1999 at 10.00 a.m.

24. P.W.25, Police Constable would state that after receipt of the complaint and the First Information Report, he went to Thiruthuraipoondi Magistrate's Court. As the Thiruthuraipoondi Magistrate was on leave, he went to Nagapattinam Magistrate's Court and then after coming to

know that he was not in charge of the respondent police station, he went to Thiruvaiyaru and thereafter, he went to Mannargudi and handed over the same to the Magistrate on 27.04.1999.

25. The documents would reveal that the complaint was received by the Magistrate of Mannargudi on 27.04.1999 at about 10.00 a.m and the seal was affixed on 28.4.1999. No explanation has been given in his statement made by P.W.25 to P.W. 23 or to P.W.24 when he was examined. No passport was produced before the Court to show that he went to various places and ultimately, handed over the First Information Report and the Complaint to the Magistrate of Mannargudi at 10.00 am. on 27.04.1999. So, in our view, the delay in reaching the documents to the Court, has not been properly explained. In such circumstances, the evidence of P.Ws.1 and 3 who stated that they saw A1 running away from the clinic is doubtful.

26. Let us now come to the evidence regarding the extra judicial confession.

27. There is no dispute in the law laid down that even if the other evidence is rejected, the extra-judicial confession given by A.1 before P.W.5 if it is held to be voluntary and would not suffer from any infirmity conviction can be passed on that basis.

28. In this case it is noticed that A1 told P.W.5, the Village Administrative Officer that she was raped by the deceased Dr.Kalidoss on 14.4.1999 at the Temple Tower Hotel at Thanjavur. We have observed in the earlier paragraphs that the sexual intercourse that A1 had with the deceased cannot be deemed to be rape, but is must have been with the consent.

29. Furthermore, the details given in the extra-judicial confession, would show that the said statement would suffer from various infirmities.

30. According to A1, after committing act of murder she went to her house at Alathampadi. Then, she went to Thiruthuraipoondi along with her brother and at about 11.00 p.m. she came to know that the doctor died and again she went to her village and next day morning, she went to the Village Administrative Office and gave extra judicial confession to P.W.5, the V.A.O.

31. Once she wanted to give extra judicial confession, she would have straightaway gone to the V.A.O. on the same night itself. There is no reason as to why she waited till the next day morning. Furthermore, no material has been placed by the prosecution to show that A1 has already known the VAO earlier.

32. It is held by the Supreme Court in RAHIM BEG AND ANOTHER VS STATE OF U.P. (1972 3 SCC 759) that when there is no history of previous association between the witness and the accused who made extra judicial confession, it cannot be inferred that A1 reposed confidence on him before making such confession, and in the said circumstances, it should be highly improbable to conclude that A1 went and gave voluntary confession to the said witness.

33. If this observation made by the Supreme Court is taken note of, then there is no difficulty in holding that A1 would not have made such confession to P.W.5 V.A.O. on 27.04.1999 at 7 .00 p.m. who was a stranger to her.

34. We have noticed yet another infirmity. Admittedly, extrajudicial confession has been recorded by P.W.5, the Village Administrative Officer only after the commencement of the investigation by the police.

35. Under Section 72 of the Criminal Rules of Practice, the Village Munsifs are prohibited from recording extra judicial confession from the accused. Though the said statement cannot be said to be inadmissible under law, the Court would not normally give importance to the extra-judicial confession given after the commencement of investigation, especially, when it does not inspire confidence in the mind of the Court.

36. In this Context, the observation made in 1971 Law Weekly Criminal page 9 (Lakshmanan, In re_) is quite relevant which is as follows:- "Having regard to the provisions of the aforesaid statutes and the actual practice, it could not be said that the village headman is a Magistrate contemplated under the Crl.P.C., who could, if, empowered, record confessional statements under the provisions of the said Code. Therefore, there is no real legal bar to the extra-judicial confessional statement made by the appellant to the village Munsif during the investigation being admitted in evidence. But having regard to the practice which is embodied in R.72 of the Criminal Rules of Practice, and the likelihood of the misuse of such extra-judicial confessions in actual practice , if admitted, it is not safe to rely on such extra-judicial confessions."

37. Therefore, in view of the above principles laid down, we are unable to rely on the extra-judicial confession made by A1 to P.W.5, the Village Administrative Officer, who has not been established to be known to A1, earlier.

38. One more aspect to be considered in this context is this. According to the prosecution, Ex.P.1 complaint was prepared at 11.00 p.m. by P.W.23 Sub Inspector of Police on 26.4.1999 on the written complaint given by P.W.1 . According to P.W.5, the Village Administrative Officer, the statement of extra judicial confession was recorded by him from A1 at about 7.00 a.m. on 27.04.1999.

39. It is contended by the learned counsel for the parties, that both Ex.P.4 and Ex P.1 must have been prepared on the same day and at the same time as the details contained in Ex.P.4 have been specifically mentioned in Ex.P.1, and as such, no reliance could be placed on both Ex.P.1 and P.4.

40. We find some force in the argument because as indicated above, P.W.1 did not inform about the involvement of A1 and A2 to any of the doctors whom she met earlier. Only in Ex.P4, extra judicial confession, the details of the occurrence and the help rendered by A2 to A1 were mentioned.

Therefore, it is probable that Ex.P.1 should have been prepared only after obtaining Ex.P.4 from A.1.

41. This is fortified by yet another factor. According to P.W.25 Constable, who took the complaint Ex.P.1 and the First Information Report and handed over the same to Mannargudi Magistrate on 27.4.1999 at 10.00 a.m, the records bear the seal of 28.4.1999. Strangely, Ex. P.4 was also received by Mannargudi Magistrate on the same day, which is evident from the seal dated 28.4.1999.

42. This shows both the documents must have been handed over to the Mannargudi Magistrate on the same day. From this, it is clear that both these documents had been prepared by the Investigating Officer at the same time. Hence, it has to be held that the prosecution has not come with clean hands as both the documents cannot be true documents.

43. In view of the foregoing discussion, we have no other alternative except to come to the conclusion that the prosecution has not established its case beyond any reasonable doubt.

44. In fine, the appeals are allowed and the conviction and sentence imposed on the appellants/accused are set aside and they are acquitted. A1/the appellant in C.A.No.551 of 2000 is directed to be set at liberty forthwith unless she is required in connection with any other case. The bail bond executed by A2/the appellant in C.A.No.531 of 2000 shall stand cancelled. The fine amount, if any, paid by the appellants shall be refunded to them.

Index: Yes
Internet: Yes
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To
1) The Addl.Sessions Judge, Nagapattinam
2) The Inspector of Police, ThiruthuraiPoondi Police Station.
3) The District Collector, Nagapattinam
4) The Public Prosecutor, High Court, Madras

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